

SERVED: March 22, 1993

NTSB Order No. EA-3837

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 16th day of March, 1993

JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12620
v.)	
)	
JULIEN COLINOS,)	
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

By Order EA-3781 (served February 1, 1993), the Board dismissed respondent's appeal for his failure to file an appeal brief in accordance with Section 821.48(a) of the Board's Rules of Practice.¹ See 49 CFR Part 821. In correspondence dated February 4, 1993, respondent, apparently seeking reconsideration of the Board's order, asserts in effect that he intended his notice of appeal to be considered as an appeal brief as well.²

¹The respondent had appealed from a law judge's decision that affirmed an order of the Administrator revoking respondent's medical certificate and suspending, for 60 days, his private pilot certificate for his alleged violation of section 67.20(a)(1) of the Federal Aviation Regulations.

²Respondent notes that his original appeal to the Board from the Administrator's order was treated as both a notice of appeal

We will deny the request for reconsideration, for even if, as explained below, respondent's notice of appeal had been treated as his appeal brief, his appeal would have been denied for the failure of the brief to raise any issue appropriate for our review.³

The law judge found that respondent had intentionally falsified a medical certificate application because he did not report a state court conviction for driving while intoxicated. In his notice of appeal to the Board from that finding, the respondent asserted, in toto, as follows:

By this notice I wish to appeal the decision of Judge William R. Mullins, on the 08 of September 1992. In my opinion, Judge Mullins overlooked the Fact that as a Foreigner, new in this country, I was not familiar with the subtleties of English; Moreover I was only a Private pilot with a little more than a hundred hours.

In our view, the only cognizable objection to the initial decision that this document could be reasonably construed to present is that the law judge was unaware of or gave inadequate consideration to evidence suggesting that respondent's admittedly false indication on the application that he had no convictions resulted from a misunderstanding or misreading of a specific question on the application.⁴ However, if that was the challenge to the initial decision that the respondent wished to raise on appeal, it would not have been entertained by the Board.⁵
(..continued)

and an answer to the order when subsequently filed as the complaint in the proceeding.

³The Administrator has filed a reply opposing respondent's request for reconsideration.

⁴Apart from the fact that the law judge was clearly aware that respondent was a French citizen who had only been in this country since March 1989 (see Transcript at 17-18), and that he was only a private pilot at the time of the alleged violation, it is far from clear to us why respondent would believe that his nationality or relative inexperience as an airman would have any relevance to the falsification issue raised in the complaint.

⁵Our effort to assess what objections respondent's notice of appeal arguably could be read to have contained reflects no judgment that that filing met the requirements of our rules on the content of an appeal brief. Section 821.48(b) of our rules of practice provides that: "Each appeal brief shall set forth in detail the objections to the initial decision, and shall state whether such objections are related to alleged errors in the law judge's findings of fact and conclusions or alleged errors in his order. It shall also state the reasons for such objections and

It is clear from the hearing transcript that respondent never took the position or suggested that his false answer on the application was the product of confusion over the wording of the pertinent question. To the contrary, respondent's defense has until now been that he believed he was not obligated to report his conviction based on advice he had received from two flight instructors.⁶ In any event, since respondent did not argue before the law judge that he was confused by the question he answered falsely, he would not have been free, had such a contention been discerned in his notice of appeal, to argue to the Board that the law judge erred in rejecting his appeal on a ground he did not ask him to consider, for any such objection would be deemed to have been waived.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's request for reconsideration is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

(..continued)
the relief requested."

⁶The law judge did not credit respondent's testimony on this score.